

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte F. DIETER PATEREK and
RICHARD L. TEAFORD

Appeal No. 1997-0524
Application No. 08/495,699

ON BRIEF

Before THOMAS, RUGGIERO, and GROSS, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-6 and 9, all of the claims pending in the present application. Claims 7 and 8 have been canceled.

The claimed invention relates to a sealing structure for a hermetic terminal assembly housing wall which has a

conductive pin extending through the housing wall with the conductive pin having a smaller cross-sectional area which acts as a fuse. More particularly, Appellants indicate at pages 5-7 of the specification that the sealing structure has a preselected coefficient of expansion compatible with that of the pin and the wall and a softening point temperature in excess of the conducting temperature adjacent the surrounded periphery surface of the pin. Appellants assert that this sealing structure prevents melting and venting through the sealing structure occasioned by the inherently high melting temperatures of the fuse.

Representative claim 1 is reproduced as follows:

1. A hermetic terminal assembly housing wall comprising;

a wall defined aperture extending between opposed inner and outer faces of a portion of said housing wall:

an integral, unitary current conducting pin of the same material throughout from one end thereof to an opposite end thereof, said pin extending in spaced relation through said wall defined aperture from said outer face to said inner face of said wall defining aperture with a smaller preselected portion of said pin having a preselected integrally associated smaller cross-sectional area to act as a fuse, and,

a sealing member surrounding and extending radially between the peripheral surface of said integral, unitary pin and said wall defined aperture to hermetically seal said current conducting integral, unitary pin in said aperture,

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said sealing member having a preselected coefficient of expansion compatible with the coefficient of expansion of said pin and said wall defining said aperture and a softening point temperature in excess of the conductive heat temperature adjacent the surrounded periphery surface area of the pin occasioned by melting of said fuse to avoid melting and venting through said sealing member.

The Examiner relies on the following prior art:

Bowsky et al. (Bowsky)	4,584,433	Apr. 22, 1986
LeMieux et al. (LeMieux)	4,609,774	Sep. 02, 1986

Claims 1-6 and 9 stand finally rejected under 35 U.S.C.
§ 103 as being unpatentable over Bowsky in view of LeMieux.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Brief and Answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, and the evidence

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of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer. It is our view, after consideration of the record before us, that the collective evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-6 and 9. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one

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having ordinary skill in the pertinent art would have been led to

modify the prior art or to combine prior art references to arrive

at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole

or knowledge generally available to one having ordinary skill in

the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825

(1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.

Cir. 1984). These showings by the Examiner are an essential part

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of complying with the burden of presenting a prima facie case
of

obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24
USPQ2d

1443, 1444 (Fed. Cir. 1992).

With respect to claim 1, the sole independent claim
before us on appeal, the Examiner, as the basis for the
obviousness rejection, proposes to modify the hermetic
terminal assembly disclosed by Bowsky which includes a current
conducting pin extending through the housing wall of the
terminal assembly and which is surrounded by a sealing member.
As recognized by the Examiner, Bowsky's disclosure is silent
as to the softening temperature of such sealing member and the
relationship of such softening temperature relative to other
components of the terminal assembly. To address this
deficiency, the Examiner turns to the terminal assembly
disclosure of LeMieux for a teaching of using a sealing member
material with a higher softening point temperature than a
fusible section of a conducting pin permitting the seal to
remain intact on melting of the fuse. In the Examiner's view
(Answer, page 6), the skilled artisan would have found it

obvious to use such a higher softening point temperature sealing member in Bowsky to enhance the sealing function of the terminal assembly in view of the teachings of LeMieux.

In response, Appellants assert (Brief, pages 6-8) a lack of suggestion or motivation in the references for combining or modifying teachings to establish a prima facie case of obviousness. After careful review of the Bowsky and LeMieux references, we are in agreement with Appellants' stated position in the Brief. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266 n. 14, 23 USPQ2d 1780, 1783-84 n. 14 (Fed. Cir. 1992). The Bowsky reference discloses a unitary conducting pin made of the same material throughout extending through the wall of the terminal assembly which includes a flange portion 21 radially extending from the conducting pin. On melting of the reduced diameter fuse area of Bowsky's conducting pin, this flange portion will abut against ledge 33 of sleeve 23, thereby preventing the conductive pin from shorting to the

housing shell or being expelled from the shell entirely. On the other hand, LeMieux's solution to the terminal assembly protection problem is to construct a pin assembly using a different material for the fusible section. The material used for LeMieux's fusible section has a lower melting point than the material used for the seal between the pin and the housing thus causing the fuse section to melt before the seal during a high temperature condition. To the contrary, Bowsky's structural flange approach to addressing the terminal assembly integrity problem obviates any need to be concerned with relative melting points of seal and conductive pin.

We note that the Examiner utilized Bowsky as the primary reference even though LeMieux, and not Bowsky, is concerned with the relative difference of melting points of the seal and pin. However, even using LeMieux as a starting point for establishing a proposed obviousness combination, the rejection would not result in the establishment of a prima facie case of obviousness under 35 U.S.C. 103. In our view, the techniques of Bowsky and LeMieux are so opposite in approach that any motivation to combine them must have resulted from an improper attempt to reconstruct Appellants' invention in hindsight.

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In summary, we are left to speculate why one of ordinary skill would have found it obvious to modify the applied prior art to make the combination suggested by the Examiner. The only reason we can discern is improper hindsight reconstruction of Appellants' claimed invention. In order for us to sustain the Examiner's rejection under 35 U.S.C. § 103, we would need to resort to speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), rehearing denied, 390 U.S. 1000 (1968). Since we are of the view that the prior art applied by the Examiner does not support the rejection, we do not sustain the rejection of independent claim 1, nor of dependent claims 2-6 and 9. Therefore, the Examiner's decision rejecting claims 1-6 and 9 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS

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Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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POLSTER LIEDER WOODRUFF & LUCCHESI
763 SOUTH NEW BALLAS ROAD
SUITE 230
ST LOUIS MO 63141

Leticia

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APJ RUGGIERO

APJ GROSS

APJ THOMAS

DECISION: REVERSED

Send Reference(s): Yes No
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: December 6, 2000

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT